STATE OF MICHIGAN

COURT OF APPEALS

ETKIN MANAGEMENT, L.L.C., f/k/a ETKIN MANAGEMENT SERVICES, INC., NORTHVILLE VILLAGE CENTER ASSOCIATION and AMERISURE INSURANCE COMPANY,

Plaintiffs-Appellees,

v

FEDERAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 18, 2003

No. 240674
Wayne Circuit Court
LC No. 01-101920-CK

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant Federal Insurance appeals as of right from judgments entered in plaintiffs' favor following the grant of plaintiffs' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Nadine Currier tripped and fell over a pavement defect located outside a Petsmart store at a shopping center in Northville. The center was owned by plaintiff Northville Village and managed by plaintiff Etkin. Currier filed a negligence action against Northville Village and Etkin, among others. Etkin had insurance coverage under a policy issued by Federal Insurance. Etkin tendered its defense to Federal Insurance, which denied the claim, contending that the shopping center was not a location to which the policy applied. Etkin then filed a declaratory judgment/breach of contract action. Northville Village intervened, claiming it was an insured under the policy. When Federal Insurance did not assume its defense, it turned to Amerisure, with whom it was also insured. Amerisure sought to recoup its costs under a theory of equitable subrogation.

All parties moved for summary disposition. The court granted plaintiffs' motions and denied defendant's, finding that the policy did not clearly and unambiguously exclude coverage for the incident. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions of law that are also reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained within the policy. *Id*. Policy language is ambiguous when, after reading the entire document, its language can be reasonably understood in different ways. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). Likewise, a policy is not rendered ambiguous by the fact that a relevant term is not defined. *Henderson, supra* at 354. If there is a conflict between the terms of the form policy and an endorsement, it is to be resolved in favor of the terms of the endorsement. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 340; 632 NW2d 525 (2001).

Under the policy, defendant agreed as follows:

> Subject to the applicable Limits of Insurance, we will pay damages the insured becomes legally obligated to pay by reason of liability imposed by law or assumed under an insured contract for:
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> > bodily injury or property damage to which this insurance applies caused by an occurrence, or
> >
> > advertising injury or personal injury to which this insurance applies caused by an offense.
> >
> > This insurance applies to:
> >
> > bodily injury or property damage which occurs during the policy period, and
> >
> > advertising injury or personal injury caused by an offense committed during the policy period.

There appears to be no dispute that Currier sought damages for bodily injury caused by an occurrence. The only issue is whether the insurance applied to this incident.

The policy included a section entitled "Coverage Territory." It provided, "This insurance applies anywhere. However, the insured's responsibility to pay damages must be determined in a suit on the merits, in the United States of America, its territories or possessions, Canada or Puerto Rico, or in a settlement we agree to." The policy also included an endorsement applicable to the general liability coverage. The endorsement, entitled "GL Location Extension," provided that the general liability insurance under the policy "is extended to cover" seven named locations. The named locations do not include the Northville shopping center where Currier was injured.

Under the policy, defendant agreed to provide general liability coverage to Etkin, a property management company located in Southfield. That insurance covered personal injury claims "to which this insurance applies" and the only limitation regarding applicability is that the personal injury claim occur during the policy period. The policy was in effect from December 4, 1998, to December 4, 1999, and Currier was injured in April 1999. The policy states that the insurance "applies anywhere." Coverage is not restricted to occurrences at any particular location. For example, it did not indicate that the insurance applies to the insured's principal place of business, the insured's property located at a particular address, or the insured's business operations conducted at one or more specified locations. Defendant apparently intended to so limit the policy via the endorsement, but failed to express that intention in clear and unambiguous language, such as by stating that coverage was *limited* to the locations named in the endorsement. Clear and unambiguous language may not be rewritten under the guise of interpretation. *Henderson, supra* at 354. The endorsement simply stated that the policy was "extended to cover" the named locations even though the policy itself already provided coverage "anywhere." The endorsement is thus redundant, the named locations being encompassed within the realm of anywhere, but is not contrary to the form policy. We therefore conclude that the trial court did not err in ruling that the policy provided coverage for the underlying incident. Summary disposition in favor of plaintiffs was properly granted.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder